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PATENT APPLICATION
Attorney's Docket No. 1482-138

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Barrie Gilbert

Serial No. 09/694,731

Examiner: Anh-Quan Tra

Filed: October 23, 2000

Group Art Unit: 2816

For: LOW SUPPLY CURRENT RMS-TO-DC CONVERTER

Date: August 2, 2004

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF REPLY BRIEF


This Reply Brief is in response to the Examiner's Answer mailed in this case on June 2, 2004 in response to the Appeal Brief filed September 8, 2003.

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Respectfully submitted,

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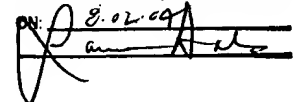
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REPLY BRIEF

This Reply Brief is responsive to the Examiner's Answer, Paper 15, dated June 2, 2004.

Regarding claim 1, the Examiner's Answer essentially fails to respond to the arguments set forth in Applicant's Appeal Brief. Claim 1 recites a method for operating a squaring cell and includes the limitation of "limiting the input signal to a range in which the output function of the transistor cell approximates a square-law." In the Appeal Brief, Applicant submitted six paragraphs setting forth arguments that, *inter alia*, the Hofmann reference does not disclose the claimed limitation; that the only teachings of the claimed limitation are found in Applicant's disclosure; and that the Hofmann reference teaches away from the claimed invention.

In the Examiner's Answer, the Examiner begins by restating the argument from the prior office action that, since the circuit of Hofmann is capable of being operated as recited in claim 1, it would have been obvious to do so. But Applicant has already responded to this argument in the Appeal Brief. Then, in a section of the Examiner's Answer titled "Response to Argument", the Examiner essentially restates the previous argument without addressing Applicant's six paragraphs of argument. The only seemingly new thing in the Examiner's

argument is a reference to Fig. 3 of Hofmann. But Fig. 3 of Hofmann is merely a graph of the equation at col. 5, lines 15-18 of Hofmann, which Applicant has addressed at length in the Appeal Brief.

Thus, regarding claim 1, the Examiner's Answer has failed to respond to the arguments set forth in Applicant's Appeal Brief.


Regarding claim 15, Applicant has argued that it cannot be obvious to select a specific input signal range where the prior art does not teach limiting the input signal to *any* range. In response, the Examiner offers a host of platitudes from the MPEP, and cases cited therein, to the effect that claiming a numerical range is obvious. The Examiner has essentially extracted a "*per se*" rule of obviousness from prior cases.

However, the Court Of Appeals for the Federal Circuit has held that the precedents do not establish any *per se* rules of obviousness, and that reliance on *per se* rules of obviousness is legally incorrect and must cease. *In re Ochiai*, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995). Significantly, all of the cases cited by the Examiner were decided before the *Ochiai* case clarified that the Federal Circuit's precedents do not establish any *per se* rules of obviousness.

Instead, section 103 requires a fact-intensive comparison of the claimed invention with the teachings of the prior art. In the present application, the prior art provides no suggestion or motivation to limit the input signal to less than about four times the bias current as recited in claim 15. Moreover, the Hofmann reference teaches away from the claimed limitation by pointing to the desirability of making the input signal much larger than the bias current for the purpose of achieving a linear output. (See col. 5, lines 19-21.) Thus, a *prima facie* case of obviousness has not been established.

Respectfully submitted,

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